IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1229 of 1999

in

SPECIAL CIVIL APPLICATIONNo 5362 of 1995

with

CIVIL APPLICATION No 12770 fo 1999

with

CIVIL APPLICATION No 13924 of 1999

and

LETTERS PATENT APPEAL No 1231 of 1999

with

CIVIL APPLICATION No 12769 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

JADAVBHAI M VALODRA

Appearance:

LPA No.1229/99, CA No.12770/99, 13924/99:

MR PREMAL JOSHI, AGP, for Appellants

MR RD RAVAL for Respondent No. 1

LPA No.1231/99 & CA No.12769/99:

MR PREMAL JOSHI, AGP, for the appellants

MR C.B.DASTOOR for the respondent.

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE A.M.KAPADIA

Date of decision: 19/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Both these appeals under clause 15 of the Letters Patent, arise out of common judgment and raise identical questions, and therefore, upon request, they are being disposed of by this common judgment.

The respondents herein are the original petitioners, who were, initially, appointed as Ward servants in Class IV in the operation theatre in Civil Hospital of the State of Gujarat. Subsequently, they were appointed on the post of Operation Theatre Assistant. The pay-scale of the post of Operation Theatre Assistant, at the relevant time, was Rs.260-340 which came to be revised to Rs.1150-1500 under the Gujarat Civil Services (Revision of Pay) Rules, 1987 (ROP) with effect from 1.1.86. The original petitioners contended that they are entitled to the pay scale of Rs.260-340 of Operation Theatre Assistant which was revised to Rs.1150-1500. The petitioners' pay, however, was fixed in the pay scale of Rs.775-1025 under the latest ROP. Being aggrieved by the said action of the respondent authority, the petitioners questioned the legality and validity of fixity of pay by filing Special Civil Application Nos.5362 of 1995 and 6901 of 1995 before this Court, which came to be allowed by the learned single Judge, holding that the petitioners are entitled to the revised pay-scale of Rs.1150-1500, notionally from 1.1.86, and from the date of on which the petitions have been filed by the original petitioners,

they shall be entitled to the actual benefits of the said pays scale. This decision was rendered on 22.4.99. Being aggrieved by the same, the appellants, original respondents, have, now, come up before us, invoking clause 15 of the Letters Patent, by filing these appeals.

The following aspects, which have emerged, unquestionably, from the record of the present case, may be articulated.

1. The respondents before us, who are, original petitioners, are not matriculate. Obviously, therefore, there would not arise the question of experience of two years with SSC, which is the requirements prescribed for the post in the time-scale of Rs.260-430, which later on revised by ROP 1987 to Rs.1150-1500.

2. It may be stated that there was only one time-scale when the original petitioners came to be promoted in the cadre of Operation Theatre Assistant from the post of Ward servant, which was class IV.

3. The petitioners had been promoted and appointed on the post of Operation Theatre Assistant from the post of Ward Servant later on and at that time, the time scale was of Rs.200-260.

4. Division of post of Operation Theatre Assistant into two classes and categories came to be made after 1.1.86.

In view of the aforesaid unquestionable facts emerging from the record of the present cases and from the examination of ROP 1987 and also 1998, we have no any manner of doubt in coming to the conclusion that the original petitioners, respondents before us, would not be entitled to the time scale of Rs.1150-1500 as they were not in the pay scale of Rs.260-430 on the date when ROP 1987 came into being. Therefore, the conclusion of the learned single Judge in the impugned judgment, in our opinion, with due respect, is fallacious and based on misreading of certain facts. It is, in this context, both the appeals are required to be allowed so as to put the erroneous and incorrect impugned order into proper and legal shape.

It may, also, be stated, at this stage, that both these appeals are similar to that of LPA No.1230 of 1999 decided by us on 27.3.2001. Common questions based on

identical facts arise in both these appeals and in the said appeal, also, arising from the same judgment and, therefore, ratio, propounded by this Court in LPA No.1230/99 on 27.3.01 is, squarely, attracted. Therefore, both these appeals, are covered by the said decision requiring, no further elaborate and meticulous discussions.

In the result, both these appeals shall stand allowed. The impugned judgment is quashed and set aside. The original petitions shall stand, obviously, rejected. In view of the facts and circumstances there shall be no order as to costs.

(J.N.Bhatt, J.)

(A.M.Kapadia, J.)
(vjn)